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SHREVEPORT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

**CARL BERNOFSKY and
SHIRLEY G. BERNOFSKY**

VERSUS

**THE ROAD HOME CORPORATION,
ICF EMERGENCY MANAGEMENT
SERVICES, LLC, LOUISIANA RECOVERY
AUTHORITY, and LOUISIANA DIVISION
OF ADMINISTRATION THROUGH THE
OFFICE OF COMMUNITY DEVELOPMENT**

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5:09cv1919

COMPLAINT

The Complaint of plaintiffs, Carl Bernofsky and Shirley G. Bernofsky, husband and wife (henceforth, plural "Bernofsky"), both domiciled in the State of Louisiana, Parish of Caddo, respectfully represents:

1.

Defendant, The Road Home Corporation (henceforth, "Road Home), now doing business as Louisiana Land Trust, is a Louisiana non-profit corporation domiciled in the State of Louisiana, with its principal place of business in the State of Louisiana.

2.

Defendant, ICF Emergency Management Services, LLC (henceforth, "ICF"), is a limited liability company domiciled in the State of Delaware, with its principal place of business in the State of Virginia.

3.

Defendant, Louisiana Recovery Authority (henceforth, "LRA"), is a state agency of the State of Louisiana, domiciled in the State of Louisiana, with its principal place of business in the State of Louisiana.

4.

Defendant, Louisiana Division of Administration through the Office of Community Development (henceforth, "OCD") is a state agency of the State of Louisiana, domiciled in the State of Louisiana, with its principal place of business in the State of Louisiana.

5.

From February 27, 1989 until February 14, 2007, Bernofsky owned the property at 6478 General Diaz Street, New Orleans, Louisiana 70124. The property is located in the residential subdivision of Lakeview, in the vicinity of the 17th Street Canal.

6.

On or about August 29, 2005, New Orleans was struck by Hurricane Katrina, a severe storm that caused widespread damage and was responsible for a storm surge that resulted in multiple levee failures, including a breach of the 17th Street Canal. Flood waters from the 17th Street Canal rapidly engulfed most of the Lakeview area, including Bernofsky's residence at 6478 General Diaz Street, which remained submerged in more than 10 feet of water for several weeks.

7.

Days before the storm reached New Orleans, city officials ordered a mandatory evacuation. Bernofsky complied and drove north in search of suitable shelter. They found a

room in Jackson, Mississippi that could be rented for one day only. The following day, they traveled west and finally found a hotel in the Shreveport area that accommodated them for up to 10 days. The kindness of the people they encountered in Shreveport was a major factor in their decision to make Shreveport their new home, where they are now domiciled.

8.

Bernofsky first applied to Road Home on May 7, 2006 via Governor Kathleen Blanco's Road Home Registry, and Bernofsky received a registry number that they printed and kept for reference. [Exhibit A]

9.

Unable to rebuild at this stage in their lives, Bernofsky decided to sell their former home. Carl Bernofsky, born November 22, 1933 is a senior citizen, 75 years of age and a 1995 cancer survivor. Shirley Bernofsky, born October 22, 1935 is a senior citizen, 74 years of age, with a back injury arising from her responsibilities as a special education teacher in New Orleans.

10.

Post-Katrina, Bernofsky paid off their mortgage, continued to pay taxes, and had their damaged property gutted. They eventually sold their property to Mr. and Mrs. Randall D. Epperly on February 14, 2007. [Exhibits B, C and D]

11.

At the time Bernofsky was attempting to sell their house, newspaper reports indicated that Road Home would only pay benefits to homeowners who planned to rebuild their homes. Bernofsky, who had not been contacted by Road Home, believed that they were not contacted because they had placed their property up for sale.

12.

As time went on, Bernofsky learned from a newspaper report that the eligibility rules for seniors had changed, and that they, Bernofsky, appeared to have become eligible for assistance. Bernofsky then turned to the Road Home for information concerning the recovery of Katrina losses that had not been compensated through any other source.

13.

On August 1, 2008, Bernofsky sent a letter to Road Home with a description of their uncompensated losses and a request for information about the application procedure. That letter was never answered. [Exhibit E]

14.

On August 12, 2008, Bernofsky sent a letter to LRA, inquiring about the new Road Home eligibility requirements for those who had sold their damaged homes. That letter was never answered. [Exhibit F]

15.

On August 19, 2008, Bernofsky sent a letter to Road Home Appeals Department with a description of their circumstances and uncompensated losses. They also inquired about the new eligibility rules for Road Home assistance. That letter was never answered. [Exhibit G]

16.

On November 11, 2008, Bernofsky sent a letter to Paul Catrou of OCD with a description of their circumstances and uncompensated losses. They also inquired about the new eligibility rules for Road Home assistance. That letter was never answered. [Exhibit H]

17.

On May 22, 2009, Bernofsky sent a letter to Paul Rainwater of LRA with a description of their uncompensated losses, a summary of their earlier attempts to obtain information about Road Home, and a request for assistance. That letter was never answered. [Exhibit I]

18.

On July 6, 2009, Bernofsky sent a letter to David Voelker of OCD with a documented explanation of their circumstances and past efforts to obtain written information about Road Home. They also requested an inquiry into their case. That letter was never answered. [Exhibit J]

19.

Frustrated, Bernofsky sought the assistance of Louisiana Senator Mary Landrieu. On May 19, 2009, Bernofsky sent Senator Landrieu a letter asking for help in locating appropriate agency personnel who could fulfill their request for information about their case. Senator Landrieu is Chairman of the Senate Subcommittee on Disaster Recovery and was then conducting hearings related to Katrina claims. Her response, dated May 22, 2009, indicated that she would contact appropriate officials on Bernofsky's behalf. [Exhibits K and L]

20.

On June 1, 2009, Bernofsky received the first of several telephone calls from Ms. Judy Johnson-White of Road Home, who informed them that Road Home had no record of their registration, nor was there any listing of their home in their records. Finally, on July 28, 2009, Johnson-White informed Bernofsky that they were not qualified for Road Home benefits because

they had not registered. Bernofsky requested a written confirmation of Johnson-White's finding, to which she agreed. Such notice of disqualification was not forthcoming.

21.

On August 3, 2009, Bernofsky wrote to Senator Landrieu with an update of their recent, unsatisfactory experience with Road Home, and on August 6, 2009, Senator Landrieu responded that she would ask Road Home to request that OCD arrange for Bernofsky to complete their application. To the best of Bernofsky's knowledge, Senator Landrieu's inquiry was not answered. [Exhibits M and N]

22.

On September 14, 2009, Senator Landrieu inquired directly to OCD about an exception that would permit Bernofsky to complete their application. [Exhibit O]

23.

On October 15, 2009, Bernofsky received a telephone call from Ms. Eva Strausbaugh of OCD, informing them that they would not be eligible to participate in Road Home because OCD "cannot make an exception, even in the case of contractor error." On October 20, 2009, Mr. Richard W. Gray, Deputy Director of OCD, sent a letter to Bernofsky informing them that their original registration with Louisiana's Housing Registry was only a "pre-application," and not an application to Road Home, and that OCD would not make an exception for individuals who did not apply before a July 31, 2007 deadline. [Exhibit P]

Plaintiff is Eligible for Benefits

24.

The Bernofsky property had sustained 51.74 % damage and was sold on February 14, 2007. LRA's November 5, 2008 *Proposed Action Plan Amendment 31* states at page 12: "Homeowners who have sold their homes prior to August 29th, 2007 may be eligible if the goals of the Program are met, and a homeowner can demonstrate that he or she remains in a loss situation after selling the damaged property to another party..." This provision was later detailed in a January 23, 2009 Press Release. [Exhibits Q and R]

According to LRA's November 5, 2008 *Proposed Action Plan Amendment 31*, at pages 9 and 10 ("Option 3"), elderly households such as Bernofsky's are eligible for compensation based on 100% of the pre-storm value of their home, and calculated as outlined in Figure 2 on page 9.

[Exhibit Q]

Argument

25.

It is undisputed that Road Home and ICF were negligent about following through on the application process that plaintiffs initiated in a timely manner through the online Road Home Registry. According to Ms. Johnson-White, Road Home did not even have a record of plaintiff's damaged property. This error on the part of Road Home and ICF could have been corrected through an appropriate application process as soon as it was discovered. Instead, Road Home chose to ignore plaintiff's repeated inquiries, and then deny plaintiffs due process under color of law.

26.

Bernofsky claims that defendants acted with callous disregard for plaintiffs' interests when they ignored repeated requests for information regarding plaintiffs' eligibility for benefits from Road Home. Clearly, it was the duty of defendants to serve the public, and specifically that class of Louisiana residents whose homes and contents were damaged in the storm associated with Hurricane Katrina, and who sustained losses that were uncompensated by other means. Defendants failed utterly in their responsibility to assist plaintiffs with their claim to benefits.

27.

Bernofsky avers that defendants have subjected them to disparate treatment in the administration of federal taxpayer funds, and that such disparate treatment constitutes a violation of plaintiffs' right to equal protection under the law as guaranteed by the Fourteenth Amendment of the U.S. Constitution and Article I, Section 3 of the Louisiana Constitution. Bernofsky further avers that defendants are liable individually and jointly for damages resulting from this violation of plaintiffs' rights.

28.

Bernofsky also avers that defendants' actions violated 42 U.S.C. Section 1983 of the Civil Rights Act because defendants' disparate treatment of plaintiffs constitutes a violation of plaintiffs' civil rights by those acting under color of law. Bernofsky further avers that defendants are liable individually and jointly for damages resulting from this violation of plaintiffs' rights.

Uncompensated Damages to Real Property

29.

Plaintiffs claim \$89,391.88 as the reasonable, uncompensated loss stemming from damage to their property inflicted by Hurricane Katrina, the failure of the 17th Street Canal, and the aftermath of those events. Two major factors contribute to this loss: 1) the difference between the fair market value of the property before the storm and proceeds from the sale of the property after the storm, and 2) the difference between the insured value of the contents of Bernofsky's home before the storm and proceeds for the contents derived from insurance after the storm. Further explanation of these factors follows. [Exhibit S]

1) The claimed fair market value of the property, \$280,000, is the lesser of the values assessed either on the basis of pre-Katrina sales of comparable homes in plaintiffs' Lakeview neighborhood or the pre-Katrina average value (\$329,276) quoted by two major real estate listing services, based on square footage. Moreover, once Bernofsky sold the house and it was renovated and remodeled, the new owner resold the property for \$315,000 despite the post-Katrina downturn in the housing market. [Exhibit T]

2) Bernofsky carried both flood insurance and homeowners insurance with State Farm Fire and Casualty Company. State Farm paid claims primarily on the flood insurance policy, which insured the building and only part (\$49,100) of the contents. State Farm did not remit to meet the level of the insured value of the contents (\$113,000) insured by Bernofsky's homeowners policy.

The items contributing to plaintiffs' Katrina losses, and all sources from which plaintiffs derived Katrina-related income, are listed in Exhibit S. Plaintiffs attest that, to the best of their knowledge, the figures cited in Exhibit S are accurate.

30.

Carl Bernofsky additionally sustained a substantial loss of intellectual property, which consisted of still unpublished research notebooks and materials from his many years as a professor at Tulane Medical School. No attempt is made here to assign or claim a monetary value for that loss.

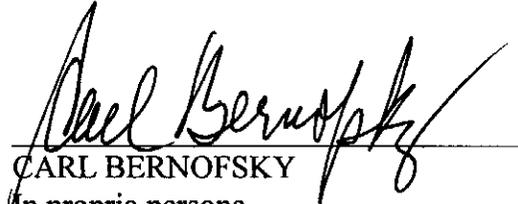
31.

This Court has proper jurisdiction over the foregoing matter because plaintiffs are residents of Caddo Parish, Louisiana, and defendants conduct their business in the State of Louisiana and are responsible for the disbursement of federal funds. The jurisdictional basis for District Court is 28 U.S.C. Section 1331. This Complaint is being filed within 30 days of the date of OCR's official letter of disqualification. [Exhibit P]

WHEREFORE, plaintiffs pray that the named defendants in this suit be duly cited to appear and answer, and, after due proceedings, that there be judgment rendered in favor of plaintiffs, Carl Bernofsky and Shirley G. Bernofsky, and against defendants, The Road Home Corporation, now doing business as Louisiana Land Trust, ICF Emergency Management Services, LLC, Louisiana Recovery Authority, and Louisiana Division of Administration through

the Office of Community Development, for all amounts owed, compensatory damages, punitive damages, and all costs of these proceedings and all penalties to be determined by this Honorable Court. Plaintiffs further pray for all general and equitable relief.

Respectively submitted,

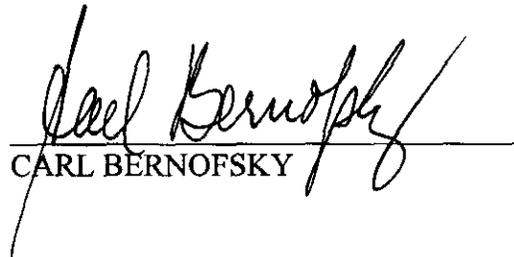

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CERTIFICATE OF SERVICE

Plaintiffs certify that a copy of the above and foregoing has this day been forwarded to all defendants by depositing a certified copy of same in the United States mail, properly addressed, postage prepaid, and certified with return receipt.

Shreveport, Louisiana, this 13th day of November, 2009.


CARL BERNOFSKY